

**HEARING HEARD IN PUBLIC**

**NUNEZ MARTINEZ, Manuel**

**Registration No: 102736**

**PROFESSIONAL PERFORMANCE COMMITTEE**

**NOVEMBER 2016 - NOVEMBER 2018**

**Most recent outcome: Suspended indefinitely\***

\*See page 29 for the latest determination

Dr Manuel NUNEZ-MARTINEZ, a dentist, Lic Odont Madrid 2005, was summoned to appear before the Professional Performance Committee on 14 November 2016 for an inquiry into the following charge:

**Charge (as amended on 14 and 16 November 2016)**

“That, being a registered dentist:

1. From approximately December 2011 to March 2012 you practised at Brighton White Dental Studio, 2 Hampton Place, Brighton, East Sussex BN1 3DD (“the Practice”).
2. Your treatment and/or record keeping was inadequate in that:
  - (a) you:
    - (i) did not provide adequate clinical care; or
    - (ii) made no or no adequate record of providing such care;as set out in Schedule A;
  - (b) you:
    - (i) inappropriately prescribed or advised the use of antibiotics; or
    - (ii) made no or no adequate record of justification for the prescription;as set out in schedule B;
  - (c) you:
    - (i) took radiographs without any or any adequate justification; or
    - (ii) made no or no adequate record of such justification;as set out in schedule C;
  - (d) you made no or no adequate record of:
    - (i) reports on radiographs; and/or
    - (ii) grading of radiographs;as set out in schedule D;

- (e) you did not respond appropriately to the onset of allergic reaction as set out in schedule E;
- (f) you:
  - (i) proposed orthodontic treatment without any or any adequate prior assessment; or
  - (ii) made no or no adequate record of such assessment;
 as set out in schedule F;
- (g) you made no or no adequate record of the matters set out in schedule G.

And that in relation to the matters set out above your fitness to practise is impaired by reason of your:

- a) misconduct; and/or
- b) deficient professional performance.”

Please note the Patient / Witness schedule is private and may not be disclosed. The other schedules detailed within the charge are listed below:

**SCHEDULE A**

Number	Patient	Particulars
1	8	On 12 January 2012 you did not conduct an adequate assessment of periodontal health before commencing treatment or made no or no adequate record of having conducted such an assessment
2	15	On 2 December 2011 you extracted LL8 without taking a pre-operative radiograph or made no or no adequate record of having conducted such an assessment
3	16	On 10 January 2012 you did not assess periodontal health before planning a course of advanced restorative treatment or made no or no adequate record of having conducted such an assessment
4	16	On 10 January 2012 you did not repeat a radiograph which was not of diagnostic standard or made no or no adequate record of having repeated the radiograph
5	21	On 10 January 2012 you did not conduct an adequate BPE or made no or no adequate record of having conducted such an examination
6	22	On 2 December 2011 you did not take appropriate radiographs or made no or no adequate record of having taken such radiographs
7	22	On 2 December 2011 you did not conduct an adequate assessment of periodontal health or made no or no adequate

		record of having conducted such an assessment
8	22	On 7 December 2011 you made inappropriate diagnostic use of an OPG
9	23	On 17 January 2012 you proposed the extraction of LL8 without adequate prior assessment or made no or no adequate record of having conducted such prior assessment
10	26	On 24 January 2012 you proposed the removal and replacement of an implant at LL6 and/or a crown at LR6 without adequate justification or made no or no adequate record of such justification
11	28	On 24 January 2012 you did not repeat a radiograph which was not of diagnostic value or made no or no adequate record of having repeated the radiograph
12	29	On 13 January 2012 you did not provide any or any adequate treatment for the patient's pain or made no or no adequate record of having provided such treatment

#### **SCHEDULE B**

<b>Number</b>	<b>Patient</b>	<b>Particulars</b>
1	19	On 1 March 2012 you prescribed antibiotics without any or any adequate attempt to remove the source of the infection or made no or no adequate record of such attempt
2	20	On 23 December 2011 you prescribed antibiotics without any or any adequate treatment to deal with dry sockets or made no or no adequate record of such treatment
3	20	On 23 March 2012 you prescribed antibiotics without any or any adequate attempt to treat the cause of the pain or made no or no adequate record of such attempt
4	25	On 13 January 2012 you prescribed antibiotics when their use was inappropriate or made no or no adequate record of the justification for the prescription
5	29	On 13 January 2012 you advised the patient to use antibiotics when their use was inappropriate or made no or no adequate record of the justification for the advice
6	33	On 31 January 2012 you prescribed antibiotics when their use was inappropriate or made no or no adequate record of the justification for the prescription
7	36	On 15 March 2012 you prescribed antibiotics when their use was inappropriate or made no or no adequate record of the justification for the prescription

### **SCHEDULE C**

<b>Number</b>	<b>Patient</b>	<b>Particulars</b>
1	1	23 February 2012
2	20	15 February 2012
3	36	2 February 2012

### **SCHEDULE D**

<b>Number</b>	<b>Patient</b>	<b>Particulars</b>
1	1	23 February 2012
2	5	25 January 2012
3	6	27 January 2012
4	14	24 February 2012
5	16	10 January 2012
6	19	6 February 2012
7	20	19 January 2012
8	23	17 January 2012
9	26	24 January 2012
10	28	13 January 2012
11	28	24 January 2012
12	29	13 January 2012

### **SCHEDULE E**

<b>Number</b>	<b>Patient</b>	<b>Particulars</b>
1	9	On 10 February 2012 you proceeded with extractions after determining that the patient had had the onset of an allergic reaction
2	9	On 10 February 2012 you failed to make an appropriate referral of the patient to a medical practitioner after determining that the patient had had the onset of an allergic reaction

### **SCHEDULE F**

<b>Number</b>	<b>Patient</b>	<b>Particulars</b>
1	3	15 December 2011

2	4	On or around 3 February 2012
3	20	On or around 2 February 2012
4	38	On or around 17 January 2012

#### **SCHEDULE G**

<b>Number</b>	<b>Patient</b>	<b>Particulars</b>
1	1	On or after 23 February 2012 you did not retain copies of clinical photographs within the patient records
2	3	On 22 March 2012 you made no or no adequate record of the consultation
3	4	On 27 January 2012 you made no or no adequate record of the consultation
4	5	On or after 25 January 2012 you did not retain copies of clinical photographs within the patient records
5	5	On 25 January 2012 you made no or no adequate record of the justification for proposing root canal treatment to LR7
6	5	On 1 February 2012 you made no or no adequate record of the consultation
7	6	On 12 January 2012 you made no or no adequate record of the extraction of UL6
8	6	On 27 January 2012 you made no or no adequate record of the consultation
9	8	On 19 January 2012 you made no or no adequate record of the consultation
10	14	On 24 February 2012 and/or 29 February 2012 you made no or no adequate record of a prescription issued
11	16	On 10 January 2012 you made no adequate record of examination or treatment proposed
12	19	On or after 6 February 2012 you did not retain copies of clinical photographs within the patient records
13	20	On 12 January 2012 you made no adequate record of the examination or the findings of the examination
14	20	On 19 January 2012 you made no adequate record of the examination or the findings of the examination
15	20	On 22 February 2012 you made no or no adequate record of the reason for prescribing Midazolam orally rather than by intravenous injection
16	20	On or before 23 March 2012 you made no or no adequate record

		of when the patient had commenced orthodontic treatment and/or when the appliances had been fitted
17	21	WITHDRAWN
18	22	On or after 7 December 2011 you did not retain copies of clinical photographs within the patient records
19	22	On 23 December 2011 you made no or no adequate record of the consultation
20	23	On or after 17 January 2012 you did not retain copies of clinical photographs within the patient records
21	26	On or after 24 January 2012 you did not retain copies of clinical photographs within the patient records
22	28	On 22 March 2012 you made no or no adequate record to indicate which tooth was being treated
23	33	On or after 31 January 2012 you did not retain copies of clinical photographs within the patient records
24	33	On 10 February 2012 you made no adequate record of a prescription issued
25	38	On or after 16 February 2012 you did not retain copies of clinical photographs within the patient records

Dr Nunez Martinez was not present and was not represented. On 22 November 2016 the Chairman announced the service of notice and findings of fact to the Counsel for the GDC:

“Service of Notice of Hearing

Mr Nunez-Martinez was neither present nor represented at this Professional Performance Committee (PPC) hearing of his case. Mr Salva Ramasamy appeared on behalf of the General Dental Council (GDC). In Mr Nunez Martinez’s absence, the Committee first considered whether notice of this hearing had been served on him in accordance with Rules 13 and 65 of the *General Dental Council (Fitness to Practise) Rules Order of Council 2006* (the Rules).

The Committee took account of the submissions of Mr Ramasamy on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee received a copy of the Notification of Hearing, dated 11 October 2016, which was sent to Mr Nunez Martinez’s registered address by way of Special Delivery. It was also provided with a copy of the Notification of Hearing which was sent to another address provided by Mr Nunez-Martinez’s former legal representatives. This copy was sent by International Recorded Delivery on 11 October 2016. The Committee was satisfied that the letters contained proper notification of today’s hearing, including its time, date and location, as well as notification that the Committee has the power to proceed with this PPC hearing in Mr Nunez Martinez’s absence. It also contained a copy of the charge against him.

In relation to the Notification of Hearing sent to Mr Nunez Martinez's registered UK address, the Committee was provided with a copy of the returned letter and a Royal Mail 'unable to deliver' stamp, due to the addressee being unknown. In relation to the Notification of Hearing which was sent to the alternative address in Spain, the Committee was provided with a copy of an International Track and Trace receipt which confirmed the item was delivered on 17 October 2016.

The Committee was provided with a telephone note, dated 4 November 2016, between Mr Nunez-Martinez and the GDC's Witness Support Officer, which detailed the process of the hearing. In the telephone note Mr Nunez-Martinez stated it was unlikely he would be attending the hearing.

The Committee was satisfied that the notice of this PPC hearing was served on Mr Nunez-Martinez in compliance with the rules.

Decision on Proceeding in the absence of Mr Nunez-Martinez:

The Committee then went on to consider whether to exercise its discretion under Rule 54 to proceed with the hearing in Mr Nunez Martinez's absence.

The Committee took account of the submissions of Mr Ramasamy on behalf of the GDC. It accepted the advice of the Legal Adviser.

Mr Ramasamy provided the Committee with a correspondence bundle containing communications between the GDC and Mr Nunez Martinez and his former solicitors. It was also provided with a transcript of proceedings before the Interim Orders Committee which demonstrated the degree to which he had engaged with the investigatory process in the past. The Committee was informed by Mr Ramasamy that Mr Nunez Martinez was no longer represented.

In making its decision the Committee was mindful that this was a discretion that must be exercised with the utmost care and caution. It also had regard to the need for fairness to both parties, as well as the public interest in the expeditious disposal of the hearing.

The Committee considered the numerous attempts made by the GDC to secure Mr Nunez Martinez's attendance. In particular, the Committee noted Mr Nunez Martinez had a telephone conversation with the Witness Support Officer who fully explained the process of the hearing and discussed whether he intended to attend the hearing in person or remotely via Skype or telephone. It took account of the email, dated 8 November 2016, which stated 'you are entitled to make representations up to and during the hearing, please do let me know by 10<sup>th</sup> November 2016 if you would like to make representations to the Committee and if so when these will be received. I will, of course, ensure that these are included. Should you wish to attend the hearing via Skype, I should appreciate your response by 10<sup>th</sup> November 2016 so that I am able to facilitate this'.

The Committee took account of the telephone note, dated 11 November 2016, between Mr Nunez Martinez and an employee of Capsticks, Solicitors instructed on behalf of the GDC, in which he stated that he 'cannot be on the computer or on the phone every day as he is constantly on the move...'. Further, on questioning whether he would be attending the hearing on the first day he stated 'he did not think so'. It also noted the latest email correspondence sent to Mr Nunez Martinez, dated 14 November 2016, which stated 'I should also like to reiterate that the hearing of your case commenced at 10:00am today. Should you wish to make any representations or participate by Skype at any point during the listing of this hearing, please let us know and provide your representations by 11:00am



today'. Later in the day the Committee was informed by Mr Ramasamy that no further response had been received from Mr Nunez Martinez.

Mr Nunez Martinez had been sent notice of today's hearing and the Committee was therefore satisfied that he was aware of today's hearing. It accepted that the GDC had made every effort to secure Mr Nunez Martinez's attendance both in person and remotely. It also noted that he had been informed that he could send written representation, which he did not. The Committee therefore concluded that he has chosen to absent himself from this hearing. The Committee noted that Mr Nunez Martinez, now representing himself, had not requested an adjournment and it had no reason to believe that an adjournment would result in his attendance.

Having weighed the interests of Mr Nunez Martinez with those of the GDC and the public interest in an expeditious disposal of this hearing the Committee determined to proceed in his absence.

#### Preliminary matters

On behalf of the GDC and pursuant to Rule 18 of 'the Rules'. Mr Ramasamy made an application to amend the charge. The proposed amendment was to correct a typographical error in relation to a date in Schedule D. The Committee accepted the advice of the Legal Adviser. It was satisfied that the amendment could be made without any injustice to Mr Nunez Martinez and therefore it acceded to the application to amend the charge.

During the course of these proceedings Mr Ramasamy made a further application to amend the charge by way of withdrawing charge 2. g), particular 17 of Schedule G. He submitted that there could be no injustice to Mr Nunez Martinez by the deletion. The Committee accepted the advice of the Legal Adviser. It acceded to the application and the charge was duly amended.

#### Applications for Patient 9 and Witness A to give evidence remotely

Mr Ramasamy made an application for Patient 9 to give evidence remotely. He submitted that it would prevent Patient 9 from having the inconvenience of travelling to London to give evidence only for a very short period. He submitted that the GDC's Rules do permit this course of action. The Committee accepted the advice of the Legal Adviser who said that Patient 9's evidence was unlikely to give rise to credibility issues. It determined to accede to the application for Patient 9 to give evidence remotely either by telephone or Skype.

Mr Ramasamy made a further application for Witness A to give evidence remotely. He submitted that the witness was only available to give evidence by Skype or telephone. The Committee accepted the advice of the Legal Adviser who said that Witness A's evidence was unlikely to give rise to credibility issues. It determined to accede to the application for Witness A to give evidence remotely either by telephone or Skype.

#### Background to the case and summary of allegations

This case arose from a complaint received by the GDC from the principal of the practice where Mr Nunez Martinez previously worked. In the course of the investigation, the GDC commissioned an independent audit of a large selection of patient records. Mr Ramasamy informed the Committee that the GDC would not be relying on the initial complaint. He further informed the Committee that the audit was completed on a larger number of patients than was presently before the Committee.



The charges against Mr Nunez Martinez concerned criticisms in relation to the treatment he provided and his record keeping in respect of 22 patients between December 2011 and March 2012.

Charges 2. a) i), 2. a) ii), 2. b) i), 2. b) ii), 2. c) i), 2. c) ii), 2. d) i), 2. d) ii), 2. e) 2. f) i), 2. f) ii) and 2. g) are further particularised in schedules A, B, C, D, E, F and G.

In relation to Schedule A it is alleged that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he did not provide adequate clinical care or made no or no adequate record of providing such care on twelve occasions involving nine patients.

In relation to Schedule B it is alleged that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he inappropriately prescribed or advised the use of antibiotics or made no or no adequate record of justification for the prescription on seven occasions involving six patients.

In relation to Schedule C it is alleged that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he took radiographs without any or any adequate justification or made no or no adequate record of such justification on three occasions involving three patients.

In relation to Schedule D it is alleged that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he made no or no adequate record of reports on radiographs and/or grading of radiographs on twelve occasions involving eleven patients.

In relation to Schedule E it is alleged that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he did not respond appropriately to the onset of an allergic reaction on one occasion involving one patient.

In relation to Schedule F it is alleged that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he proposed orthodontic treatment without any or any adequate prior assessment or made no or no adequate record of such assessment on four occasions involving four patients.

Finally, in relation to Schedule G it is alleged that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he made no or no adequate record in respect of a variety of clinical matters on twenty-four occasions involving sixteen patients.

### Evidence

The Committee heard oral evidence from Patient 9, Witness A and the expert witness instructed on behalf of the GDC, Mr David Igoe.

In relation to Patient 9 and Witness A, the Committee considered that they had given their evidence in a credible, open and honest manner.

In relation to Mr Igoe, the Committee considered that, on the whole, his evidence was credible and fair.

The Committee was also provided with documentary material in relation to the heads of charge against Mr Nunez Martinez, namely: the dental records in relation to the twenty-two patients concerned; an audit report on each of the patient records; three witness statements; a copy of email correspondence from Witness A; an expert report, dated 11 May 2016, from Mr Igoe; an addendum expert report, dated 13 June 2016, from Mr Igoe and a correspondence bundle.

Before the closing submissions on the facts, Mr Ramasamy asked the Committee if it would like to grant a further period of time for him to complete additional checks to see if any correspondence or written representations had been received from Mr Nunez Martinez. He confirmed that he had made checks with his instructing solicitors throughout this hearing and had requested that the GDC inform him if any correspondence was received. He informed the Committee the last check was made on the evening of the 17 November 2016 and that, at that point, no correspondence had been received. The Committee accepted the advice of the Legal Adviser. It determined that, as all efforts had been made to check throughout the hearing, that a further period of delay would not be necessary considering it had already determined it was appropriate to proceed in Mr Nunez Martinez's absence.

#### Committee's findings of fact

The Committee took into account all the evidence presented to it. It considered the submissions made by Mr Ramasamy on behalf of the GDC.

The Committee accepted the advice of the Legal Adviser. In the course of his advice, the Committee was reminded that the burden of proof lies with the GDC, and it considered the heads of charge on the civil standard of proof, that is to say, the balance of probabilities.

In taking account of the legal advice, the Committee drew no adverse inferences from the absence of Mr Nunez Martinez or from the fact that there had been Interim Order proceedings. The Committee was also advised that it should take into account Mr Nunez Martinez's case if it was apparent to it. In accepting that advice, the Committee permitted the Legal Adviser, in the course of the hearing, to ask any witnesses giving oral evidence, questions which might have been put had Mr Nunez Martinez been present or represented.

In accordance with the Legal Adviser's advice the Committee considered each head of charge separately.

In considering the dental records before the Committee, accepted that it was more likely than not that the records, before it, were complete. It took into account that Mr Nunez Martinez had been given every opportunity to produce submissions to the contrary and noted that these were not advanced by him. It further noted that the GDC had commissioned an independent audit to ensure that all relevant patient records had been made available to it. The Committee bore in mind that it had no evidence before it that the records were in fact not complete or that they had been altered. The Committee therefore proceeded to consider each of the heads of charge on the basis that it had received all the dental records. In its findings of fact references to 'dental records' include both sets of records.

The Committee accepted the submission by Mr Ramasamy that when approaching the charges if the Committee had found a particular of charge 2 proved in relation to the treatment being inadequate it did not need to proceed to consider whether the charge was proved in relation to recording.

I will now announce the Committee's findings of fact:

1.	<p><i>From approximately December 2011 to March 2012 you practised at Brighton White Dental Studio, 2 Hampton Place, Brighton, East Sussex BN1 3DD ("the Practice").</i></p> <p>Found proved.</p> <p>The Committee noted that it was confirmed in various parts of the</p>
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	evidence before it that Mr Nunez Martinez practised at the Brighton White Dental Studio during the period of approximately December 2011 to March 2012. Consequently, it found this charge proved.
2.	<i>Your treatment and/or record keeping was inadequate in that:</i>
2. a)	<i>you:</i>
2. a) i)	<i>did not provide adequate clinical care; or</i>
2. a) ii)	<i>made no or no adequate record of providing such care; as set out in Schedule A;</i>
2. a) i) 1)	Found proved.  The Committee accepted the evidence of Mr Igoe that, on 12 January 2012, there was no evidence of Mr Nunez Martinez carrying out an assessment of the patient's periodontal health adequate or otherwise. It therefore found this charge proved.
2. a) i) 2)	Found proved.  The Committee considered that it had no evidence before it to demonstrate that, on 2 December 2011, a pre-operative radiograph was taken to establish root morphology and/or proximity to the supporting structures. It therefore determined that, it was more likely than not that a pre-operative radiograph was not taken. Accordingly, it found this charge proved.
2. a) i) 3)	Found not proved.  The Committee concluded there was no evidence before it that, on 10 January 2012, the purpose of the consultation was to plan advanced restorative treatment. It therefore determined there was no requirement on that day to undertake an assessment of periodontal health for that purpose. Accordingly, the Committee found this charge not proved.
2. a) ii) 3)	As the Committee concluded in charge 2. a) i) 3) that there was no requirement on Mr Nunez Martinez to undertake an assessment of periodontal health, he would not be required to record doing so. The Committee therefore concluded that this charge fell away.
2. a) i) 4)	Found proved.  The Committee had sight of the radiograph and accepted Mr Igoe's evidence that the radiograph taken was not of diagnostic standard. It noted there was no evidence before it of Mr Nunez Martinez taking a further radiograph on 10 January 2012 and it therefore found this charge proved.
2. a) i) 5)	Found not proved.  The Committee determined there was no sufficient evidence that the BPE was inadequate. It therefore found this charge not proved.  Found not proved.

2. a) ii) 5)	The Committee considered there was an adequate BPE in the records. It therefore found this charge not proved.
2. a) i) 6)	Found proved.  The Committee accepted Mr Igoe's oral evidence that the OPG taken by Mr Nunez Martinez, on 2 December 2011, was not the appropriate radiograph for a new patient. In light of this, it found this charge proved.
2. a) i) 7)	Found proved.  The Committee accepted the evidence of Mr Igoe that, on 2 December 2011, there was no evidence that any assessment had been carried out of the patient's periodontal health, adequate or otherwise. It therefore found this charge proved.
2. a) i) 8)	Found not proved.  The Committee was of the view there was no evidence before it that Mr Nunez Martinez made inappropriate use of an OPG at the appointment on 7 December 2011. It therefore found this charge not proved.  Found not proved.
2. a) ii) 8)	The Committee considered as it had already determined that he did not use the OPG at the appointment on 7 December 2011 then he would not have been expected to record it. It therefore found this charge not proved.
2. a) i) 9)	Found proved.  The Committee accepted the opinion of the GDC expert that further assessment was required prior to the proposed extraction of LL8. The Committee considered that it had no evidence before it to demonstrate that, on 17 January 2012, Mr Nunez Martinez had made any such assessment. It therefore found this charge proved.
2. a) i) 10)	Found proved.  The Committee had before it an appointment plan, dated 7 February 2012, detailing costs relating to proposed treatment in respect of LL6 and LR6. However, it had no evidence before it of any justification for the treatment. It therefore found this charge proved.
2. a) i) 11)	Found proved.  The Committee had sight of the radiographs taken and accepted Mr Igoe's evidence that one of the radiographs taken was not of diagnostic value. It noted there was no evidence before it of Mr Nunez Martinez taking a further radiograph on 24 January 2012. It therefore found this charge proved.
2. a) i) 12)	Found proved.  The Committee considered that Mr Nunez Martinez only prescribed antibiotics to resolve this patient's pain. It concluded that it had no

	evidence before it of Mr Nunez Martinez providing any treatment to address the patient's pain. Accordingly, it found this charge proved.
2. b)	<i>you:</i>
2. b) i)	<i>inappropriately prescribed or advised the use of antibiotics; or</i>
2. b) ii)	<i>made no or no adequate record of justification for the prescription; as set out in schedule B;</i>
2. b) i) 1)	Found proved.  The Committee accepted that Mr Nunez Martinez did provide antibiotics. It considered that it had no evidence before it that, on 1 March 2012, Mr Nunez Martinez had made an adequate attempt to remove the source of the infection prior to prescribing antibiotics. It accepted Mr Igoe's evidence that antibiotics should be provided as an adjunct to treatment to remove the source of the infection. In light of these findings the Committee found Mr Nunez Martinez's prescribing to be inappropriate and it therefore found this charge proved.
2. b) i) 2)	Found proved.  The Committee accepted that Mr Nunez Martinez did provide antibiotics. It considered that it had no evidence before it that, on 23 December 2011, Mr Nunez Martinez provided adequate treatment to deal with the dry sockets. In light of this, the Committee found Mr Nunez Martinez's prescribing to be inappropriate and therefore found this charge proved.
2. b) i) 3)	Found proved.  The Committee accepted that Mr Nunez Martinez did provide antibiotics. It considered that it had no evidence before it that, on 23 March 2012, Mr Nunez Martinez made any attempt to treat the cause of the patient's pain. In light of this, the Committee found Mr Nunez Martinez's prescribing to be inappropriate and therefore found this charge proved.
2. b) i) 4)	Found proved.  The Committee considered that the dental records did not give any indication that the prescription of antibiotics was necessary at the appointment on 13 January 2012. It therefore found Mr Nunez Martinez's prescription of antibiotics, on this occasion, to be inappropriate and it therefore found this charge proved.
2. b) i) 5)	Found proved.  The Committee noted from the records that, on 13 January 2012, the patient presented with pain. It accepted that Mr Nunez Martinez did advise the use of antibiotics at that appointment. However, it considered that it had no evidence before it that he made any attempt to treat the pain the patient was experiencing. In light of these findings the Committee found Mr Nunez Martinez's advice to be inappropriate and it therefore found this charge proved.

2. b) i) 6)	Found not proved.  The Committee considered that, whilst it is clear from the records that a prescription was issued on 31 January 2012, there was no evidence to support that the prescription was for antibiotics. It therefore found this charge not proved.
2. b) ii) 6)	The Committee took the approach that, as it found in relation to charge 2. b) i) 6) that there was no evidence to support that the prescription was for antibiotics, it was of the view that consequently no justification was necessary. It therefore concluded that this charge fell away.
2. b) i) 7)	Found proved.  The Committee considered that the dental records did not give any indication as to why the prescription of antibiotics was necessary at the appointment of 15 March 2012. It therefore found that Mr Nunez Martinez's prescription of antibiotics, on this occasion, was inappropriate and it therefore found this charge proved.
2. c)	<i>you:</i>
2. c) i)	<i>took radiographs without any or any adequate justification; or made no or no adequate record of such justification; as set out in schedule C;</i>
2. c) i) 1)	Found not proved.  The Committee was of the view that it is more likely than not that Mr Nunez Martinez was justified in taking the radiographs following his findings on examination of the patient.  Found proved.
2. c) ii) 1)	Although the Committee determined that it was more likely than not that Mr Nunez Martinez was justified in taking the radiographs, he did not record the justification in the dental records. It therefore found this charge proved.
2. c) i) 2)	Found proved.  The Committee concluded that whilst the records do show Mr Nunez Martinez's reason for taking the radiograph on 15 February 2012, the records do not contain any justification for repeating a radiograph that had only recently been taken on 19 January 2012. It therefore found this charge proved.
2. c) i) 3)	Found proved.  The Committee noted a radiograph had been taken on 14 December 2011 by a previous treating dentist. On 27 January 2012 when Mr Martinez was the treating dentist the records indicated 'no PA TAKEN as existing one'. On 2 February 2012 the records indicated '1 pa taken'. It concluded that there was no justification before it for repeating the radiograph which, it inferred from the records, had been acceptable on 27



	January 2012. It therefore found this charge proved.
2. d)	<i>you made no or no adequate record of:</i>
2. d) i)	<i>reports on radiographs; and/or</i>
2. d) ii)	<i>grading of radiographs; as set out in schedule D;</i>
2. d) i) 1)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 23 February 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.  Found proved.
2. d) ii) 1)	The Committee checked the dental records and noted they indicate that radiographs were taken on 23 February 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. d) i) 2)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 25 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.  Found proved.
2. d) ii) 2)	The Committee checked the dental records and noted they indicate that radiographs were taken on 25 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. d) i) 3)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 27 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.  Found proved.
2. d) ii) 3)	The Committee checked the dental records and noted they indicate that radiographs were taken on 27 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. d) i) 4)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 24 February 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.



2. d) ii) 4)	<p>Found proved.</p> <p>The Committee checked the dental records and noted they indicate that radiographs were taken on 24 February 2014. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.</p>
2. d) i) 5)	<p>Found proved.</p> <p>The Committee checked the dental records and noted they indicate that a radiograph was taken on 10 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiograph taken. It therefore found this charge proved.</p>
2. d) ii) 5)	<p>Found proved.</p> <p>The Committee had sight of a radiograph dated 10 January 2012. However, there was no evidence in the record of grading of this radiograph. It therefore found this charge proved.</p>
2. d) i) 6)	<p>Found proved.</p> <p>The Committee checked the dental records and noted they indicate that radiographs were taken on 6 February 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.</p>
2. d) ii) 6)	<p>Found proved.</p> <p>The Committee checked the dental records and noted they indicate that radiographs were taken on 6 February 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.</p>
2. d) i) 7)	<p>Found proved.</p> <p>The Committee checked the dental records and noted they indicate that radiographs were taken on 19 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.</p>
2. d) ii) 7)	<p>Found proved.</p> <p>The Committee checked the dental records and noted they indicate that radiographs were taken on 19 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.</p>
2. d) i) 8)	<p>Found proved.</p> <p>The Committee checked the dental records and noted they indicate that radiographs were taken on 17 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.</p>
	<p>Found proved.</p> <p>The Committee checked the dental records and noted that they indicate</p>

2. d) ii) 8)	that radiographs were taken on 17 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. d) i) 9)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 24 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.  Found proved.
2. d) ii) 9)	The Committee checked the dental records and noted they indicate that radiographs were taken on 24 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. d) i) 10)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 13 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.  Found proved.
2. d) ii) 10)	The Committee checked the dental records and noted they indicate that radiographs were taken on 13 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. d) i) 11)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 24 January 2012. Whilst the Committee noted that Mr Nunez Martinez did make some record in relation to reporting on the radiographs, he did not record that one of the radiographs was not of diagnostic quality. It therefore found this charge proved.  Found proved.
2. d) ii) 11)	The Committee checked the dental records and noted they indicate that radiographs were taken on 24 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. d) i) 12)	Found proved.  The Committee checked the dental records and noted they indicate that radiographs were taken on 13 January 2012. However, it concluded that there was no evidence in the records of Mr Nunez Martinez reporting on the radiographs taken. It therefore found this charge proved.  Found proved.  The Committee checked the dental records and noted they indicate that

2. d) ii) 12)	radiographs were taken on 13 January 2012. However, it concluded that there was no evidence in the records of grading of the radiographs taken. It therefore found this charge proved.
2. e)	<i>you did not respond appropriately to the onset of allergic reaction as set out in schedule E;</i>
2. e) i) 1)	Found proved.  The Committee concluded it was clear from the dental records that Mr Nunez Martinez determined the patient had had a mild allergic reaction. The notes further detailed that Mr Nunez Martinez administered emergency medication and that subsequently the patient was feeling much better. The notes then detailed that Mr Nunez Martinez proceeded with the extractions. The Committee accepted Mr Igoe's evidence that this would not be standard practice in such circumstances. It therefore found this charge proved.
2. e) i) 2)	Found proved.  The Committee accepted the oral evidence of Patient 9 who said he could not recall being referred to secondary care. The patient's dental records made no reference to a referral. The Committee accepted Mr Igoe's opinion that accepted practice would require a referral to secondary care. On a balance of probabilities, the Committee concluded that no referral was made and therefore found this charge proved.
2. f)	<i>you:</i>
2. f) i)	<i>proposed orthodontic treatment without any or any adequate prior assessment; or</i>
2. f) ii)	<i>made no or no adequate record of such assessment; as set out in schedule F;</i>
2. f) i) 1)	Found proved.  The Committee found no evidence before it to demonstrate that Mr Nunez Martinez had undertaken any adequate prior assessment, of the patient, before proposing orthodontic treatment. It therefore found this charge proved.
2. f) i) 2)	Found proved.  For the same reasons as outlined at charge 2. f) i) 1).
2. f) i) 3)	Found proved.  The Committee noted that some clinical assessment had been undertaken on or around 2 February 2012. However, it accepted the opinion of Mr Igoe and determined that this would not constitute an adequate assessment prior to proposing orthodontic treatment. It therefore found this charge proved.
2. f) i) 4)	Found proved.  The Committee noted that a limited assessment had been undertaken on

	or around 17 January 2012. However, in its view this was insufficiently detailed and therefore did not constitute an adequate assessment prior to the proposal of orthodontic treatment. Accordingly, it found this charge proved.
2. g)	<i>you made no or no adequate record of the matters set out in schedule G.</i>
2. g) 1)	Found proved.  The Committee accepted the evidence of Witness A that there was no provision within the practice's software for digital photographs to be stored. However, it also accepted Mr Igoe's evidence that there were other methods which could have been used to store the photographs securely. It found that, although the records state that photographs were taken, there were no copies of any clinical photographs contained with the patient records. It therefore found this charge proved.
2. g) 2)	Found proved.  The Committee checked the dental records and found that the notes only detailed that a consultation took place, not what happened within the appointment. It determined that there was no adequate record of this consultation and it therefore found this charge proved.
2. g) 3)	Found proved.  The Committee found this charge proved for the same reason as outlined at charge 2. g) 2).
2. g) 4)	Found proved.  The Committee found this charge proved for the same reasons as outlined at charge 2. g) 1).
2. g) 5)	Found proved.  The Committee noted that the records do detail some information regarding what happened at this consultation. However, the records do not contain any justification for the proposal of root canal treatment to LR7. It therefore found this charge proved.
2. g) 6)	Found proved.  The Committee checked the dental records and found that the notes only detailed that a consultation took place and that LL6 was missing. It did not contain adequate details of what happened within the appointment. It determined that there was no adequate record of this consultation and it therefore found this charge proved.
2. g) 7)	Found not proved.  The Committee was not satisfied that there was evidence to show that UL6 was extracted on 12 January 2012 and therefore it found this charge not proved.
2. g) 8)	Found proved.  The Committee checked the dental records and found that there were

	some notes of what happened at this appointment, such as a bone graft. However, it found that this was not an adequate record of what took place during this appointment and it therefore found this charge proved.
2. g) 9)	<p>Found proved.</p> <p>The Committee checked the dental records and found that they only detailed that a consultation took place and that there was a missing tooth. It did not contain adequate details of what happened within the appointment. It determined that there was no adequate record of this consultation and it therefore found this charge proved.</p>
2. g) 10)	<p>Found proved.</p> <p>The Committee noted in the dental records there was mention of a prescription at the appointments on 24 February 2012 and 29 February 2012. However, it further noted that on 24 February 2012 the records detailed the proposal of a prescription, not the issue.</p> <p>In relation to the 29 February 2012 the records detailed that the prescription was completed, which the committee took to mean issued. It concluded that there was no adequate record of the prescription on this date. It therefore found this charge proved.</p>
2. g) 11)	<p>Found not proved.</p> <p>The Committee has taken the wording of the charge to refer to the examination and treatment that was carried out on 10 January 2012. It found that the dental records do contain adequate details of the examination and treatment which took place on the 10 January 2012. It considered that whilst the dental records do contain an indication of future treatment there was no evidence before it that future treatment was proposed on that day. It therefore found this charge not proved.</p>
2. g) 12)	<p>Found proved.</p> <p>The Committee found this charge proved for the same reasons as outlined at charge 2. g) i) 1).</p>
2. g) 13)	<p>Found proved.</p> <p>The Committee checked the dental records. It considered that the records for the 12 January 2012 do not contain an adequate record of the examination or the findings of the examination which took place on that date. It therefore found this charge proved.</p>
2. g) 14)	<p>Found proved.</p> <p>The Committee checked the dental records. Whilst it accepted there was some detail in the records relating to this appointment, the notes do not contain an adequate clinical record of the examination or the findings of the examination. It therefore found this charge proved.</p>
2. g) 15)	<p>Found proved.</p> <p>The Committee accepted the documentary evidence of Witness 20 who described receiving a sedative orally. It also accepted Mr Igoe's evidence</p>

	that administering Midazolam orally was not the standard method. It checked the dental records and noted that they only detailed that Midazolam was administered and not the reason for prescribing the medication orally. It therefore found this charge proved.
2. g) 16)	Found proved.  The Committee checked the dental records and it noted that, on 22 February 2012, there was a record detailing 'imps taken for whitening trays and clear aligners'. However, on the evidence before it there was no adequate record on or before 23 March 2012 of the commencement of orthodontic treatment and/or of the fitting of the appliances. It therefore found this charge proved.
2. g) 17)	WITHDRAWN
2. g) 18)	Found proved.  The Committee found this charge proved for the same reasons as outlined at charge 2. g) i) 1).
2. g) 19)	Found proved.  The Committee checked the dental records and found that save for presence of a consent form, which is not a record of the consultation, there was no record other than a note that a consultation took place. It therefore found this charge proved.
2. g) 20)	Found proved.  The Committee found this charge proved for the same reasons as outlined at charge 2. g) i) 1).
2. g) 21)	Found proved.  The Committee found this charge proved for the same reasons as outlined at charge 2. g) i) 1).
2. g) 22)	Found proved.  The Committee checked the dental records and found that, although the records do contain details of what took place at the appointment on 22 March 2012, they did not contain any reference to which tooth was being treated on that date. It therefore found this charge proved.
2. g) 23)	Found proved.  The Committee found this charge proved for the same reasons as outlined at charge 2. g) i) 1).
2. g) 24)	Found proved.  The Committee found that, although the dental records detail that a prescription was issued, they do not provide any further information and therefore this does not constitute an adequate record. Accordingly, the Committee found this charge proved.
2. g) 25)	Found proved.

The Committee found this charge proved for the same reasons as outlined at charge 2. g) i) 1).
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The hearing will now proceed to stage 2.”

On 24 November 2016 the Chairman announced the determination as follows:

“Having announced its findings on all the facts, the Committee heard submissions on the matters of misconduct, deficient professional performance, impairment and sanction.

In accordance with Rule 20 (1) (a) of the Rules, the Committee was informed by Mr Ramasamy that Mr Nunez Martinez does have previous fitness to practice history. Mr Ramasamy provided the Committee with an Investigating Committee (IC) advice letter dated 24 June 2011.

In Mr Ramasamy’s submissions on misconduct, he referred the Committee to a number of cases, including the case of *Roylance v GMC* (no. 2) [2000] 1 AC 311 which defines misconduct as ‘a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed...’. He submitted that the facts found proved must be so serious that they amount to misconduct.

Mr Ramasamy submitted that, were the Committee to consider that the facts found proved were not so serious as to amount to misconduct, it should then consider the matter of deficient professional performance. He referred to the case of *R (on the application of Dr. Malcolm Calhaem) v General Medical Council* [2007] EWHC 2606 (Admin) which sets out that deficient performance is a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the registrant’s work. He referred the Committee to the expert opinion of Mr Igoo who stated that the sample taken of Mr Nunez Martinez’s work was a fair sample.

Mr Ramasamy submitted that because of the seriousness of the facts found proved this was a case of misconduct and not just deficient professional performance. He submitted that Mr Nunez Martinez’s conduct fell far below the standard expected of a registered dentist. He referred the Committee to the evidence of Mr Igoo and submitted that the facts found proved are so serious that they do amount to misconduct. He outlined the specific issues identified in line with the standards, which in his submission, have been breached.

Mr Ramasamy informed the Committee that if it was to find misconduct it did not need to proceed to make a finding on deficient professional performance.

Mr Ramasamy then moved on to the issue of current impairment and referred the Committee to a number of cases. He addressed the Committee on the factors that it must consider, including Mr Nunez Martinez’s level of insight, whether his failings are remediable and whether they have been remedied. He also addressed the Committee on the need to have regard to protecting the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the GDC as a regulatory body. In this regard, Mr Ramasamy referred the Committee to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council* (2) Grant [2011] EWHC 927 (Admin).



On the issues of insight and remediation, Mr Ramasamy referred the Committee to a letter, dated 16 September 2015, from Mr Nunez Martinez's former solicitors. He submitted that apart from this letter there has been a lack of evidence of any remediation. He also submitted that there has been no evidence of Mr Nunez Martinez's insight. He submitted that Mr Nunez Martinez's fitness to practise is currently impaired by reason of misconduct.

Mr Ramasamy addressed the Committee on the matter of sanction and referred it to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016). He submitted that the appropriate and proportionate sanction was one of suspension for a period of 12 months with a review.

#### Committee's considerations

The Committee had regard to all the evidence before it and gave consideration to the submissions of Mr Ramasamy on behalf of the GDC. It accepted the advice of the Legal Adviser.

In its deliberations, the Committee had regard to the GDC's *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

#### Decision on misconduct

The Committee first considered whether the facts found proved amount to misconduct. In considering the issue of misconduct, the Committee reminded itself of the extent and nature of the findings of fact made against Mr Nunez Martinez. The Committee's reasons for its findings have been set out in full in its determination on the facts.

When determining whether the facts found proved amounted to misconduct the Committee had regard to the terms of the relevant professional standards in force at the time.

The Committee, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage. The Committee exercised its own independent judgement in reaching its decision.

The Committee concluded that Mr Nunez Martinez's conduct was in breach of the GDC's *Standards for Dental Professionals* (May 2005) as set out below:

- 1.3 Work within your knowledge, professional competence and physical abilities. Refer patients for a second opinion and for further advice when it is necessary, or if the patient asks. Refer patients for further treatment when it is necessary to do so.
- 1.4 Make and keep accurate and complete patient records, including a medical history, at the time you treat them. Make sure that patients have easy access to their records.
- 5.1 Recognise that your qualification for registration was the first stage in your professional education. Develop and update your knowledge and skills throughout your working life.
- 5.2 Continuously review your knowledge, skills and professional performance. Reflect on them, and identify and understand your limits as well as your strengths.

- 5.3 Find out about current best practice in the fields in which you work. Provide a good standard of care based on available up-to-date evidence and reliable guidance.
- 5.4 Find out about laws and regulations which affect your work, premises, equipment and business, and follow them.

The Committee accepted that breaches of the standards do not inevitably result in a finding of misconduct.

The Committee considered that many of the breaches in this case were serious and concerned basic and fundamental areas of dentistry. The breaches also represented serious departures from the standards expected of a registered dentist. It considered that these breaches were capable of undermining the public interest in maintaining public confidence in the profession and upholding proper standards of conduct and behaviour.

Mr Nunez Martinez's failings included omissions to undertake periodontal and other assessments of the dental health of patients and to make appropriate use of radiographs for diagnostic purposes. Unless a patient's dental condition is fully and properly assessed, and recorded prior to treatment, subsequent treatment is at risk of being jeopardised.

The Committee considered that these failings were compounded by the fact that, as well as routine treatments, Mr Nunez Martinez also proposed advanced courses of treatment, involving implants and orthodontics, without carrying out any prior adequate assessment. The Committee determined that Mr Nunez Martinez's conduct did have the potential to put patients at risk of harm. It concluded that these failings were far below the standard expected of a registered dentist and would be considered deplorable by fellow practitioners.

In respect of his radiographic practice, the Committee considered Mr Nunez Martinez's failings to be serious, particularly in relation to taking radiographs without justification as well as failing to report on and/or grade the radiographs. It determined that Mr Nunez Martinez's failings represented a repeated lack of adherence to the legal requirements of the Ionising Radiation (Medical Exposure) Regulations 2000 (IR(ME)R 2000). In this respect, it also determined that his conduct fell far below the expected standard and would be considered deplorable by fellow practitioners.

The Committee's findings of fact in relation to the assessment and recording of patients' dental health prior to and during treatment are also illustrated by, and are consistent with, its findings of fact in relation to record keeping generally which was far below the standard expected of a registered dentist.

In light of the above, the Committee was in no doubt that the facts found proved amount to misconduct.

#### Decision on current impairment

The Committee next considered whether Mr Nunez Martinez's fitness to practise is currently impaired by reason of his misconduct. In reaching its decision on impairment, the Committee exercised its own independent judgement. It bore in mind that its duty was to consider the public interest, which includes the protection of patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

In reaching its decision the Committee had regard to whether Mr Nunez Martinez's failings were remediable, whether they have been remedied and whether they were unlikely to be

repeated. The Committee accepted that Mr Nunez Martinez's failings related solely to his clinical practice and it considered that they were capable of being remedied.

The Committee did have before it limited evidence of relevant Continuing Professional Development (CPD) courses attended by Mr Nunez Martinez. However, it noted that it had not been provided with any evidence of CPD undertaken by Mr Nunez Martinez since 2014. Aside from evidence of that CPD, some testimonials produced in November 2014 and the letter from his former solicitors, dated 15 September 2015, the Committee did not have before it any evidence of remediation undertaken by Mr Nunez Martinez.

Additionally, due to Mr Nunez Martinez's limited engagement with this investigation and his non-engagement with this hearing, the Committee had before it very little evidence of any development of insight into his failings or of his understanding of the potential risk of harm to his patients or the impact his actions could have had on public trust and confidence in the profession.

The limited evidence of remediation and insight lead the Committee to conclude that there remained a real risk of repetition.

The Committee bore in mind that its primary function is to protect patients. It also considered the wider public interest, which includes maintaining confidence in the dental profession and the GDC as a regulator, and upholding proper standards and behaviour. The Committee concluded that to make a finding of no current impairment would send a message to the public and the profession that Mr Nunez Martinez's conduct was acceptable. The Committee had regard to the serious nature of the issues identified in the circumstances of this case when reaching this decision.

Having regard to all these factors, the Committee concluded that Mr Nunez Martinez's fitness to practise is currently impaired by reason of misconduct.

#### Decision on sanction

Having determined that Mr Nunez Martinez's fitness to practise is currently impaired by reason of misconduct, the Committee considered what sanction, if any, to impose on his registration. It reminded itself that the purpose of a sanction is not to be punitive, but is to protect patients and to address the wider public interest.

The Committee considered the range of sanctions available to it, starting with the least serious. It applied the principle of proportionality, balancing the public interest with Mr Nunez Martinez's own interests.

The Committee took into account that it had no evidence of any factors which might mitigate in favour of Mr Nunez Martinez.

In the light of the findings against Mr Nunez Martinez, the Committee determined that it would be wholly inappropriate to conclude this case without taking any action or with a reprimand. It considered that the serious departures from the standards expected of a registered dentist, raising as it does significant concerns regarding the risk of repetition, required some form of restriction on his practice. It concluded that allowing Mr Nunez Martinez to practise unrestricted would not address the potential risk of harm to patients nor would it address the wider public interest concerns raised in this case.

The Committee then went on to consider whether conditional registration would provide the necessary level of public protection and address the public interest engaged in this case. Whilst the Committee accepted that conditions could be formulated to address the clinical

deficiencies identified, conditions of practice require a positive engagement on behalf of the registrant which has not been present in this case. The Committee had before it no evidence that Mr Nunez Martinez would comply with any conditions imposed on his registration. It therefore determined that, in the circumstances of this case, conditions of practice would not provide the necessary level of protection and would therefore not be the appropriate and proportionate sanction.

The Committee next considered whether a period of suspension would be an appropriate and proportionate sanction. The Committee took into account that Mr Nunez Martinez's failings were serious and repeated. The Committee concluded that, due to the lack of evidence of any remediation or insight on Mr Nunez Martinez's part into his failings, there remains a risk of repetition and therefore a period of suspension is needed to protect the public and the wider public interest. It was of the view that public protection and public confidence in the profession and the GDC, as its regulator, would not be upheld by any lesser sanction than one of suspension.

Accordingly, the Committee determined that the appropriate and proportionate sanction was one of suspension. The Committee did consider erasure but concluded that it would be disproportionate in the circumstances of this case.

In considering the length of suspension, the Committee determined that the maximum 12-month period of suspension was necessary because of the severity of the concerns raised. The Committee considered that 12 months would also provide enough time for Mr Nunez Martinez to engage in this process and to demonstrate any insight and/or remediation he might have gained during this period.

The Committee therefore decided to suspend Mr Nunez Martinez's registration for a period of 12 months, and for the case to be reviewed prior to the end of the period of suspension. A Committee will review Mr Nunez Martinez's case at a resumed hearing to be held shortly before the end of the period of suspension on his registration.

A reviewing Committee may be assisted by receiving the following:

- Evidence to demonstrate that Mr Nunez Martinez has developed insight into his failings
- Evidence that he has taken at least some steps to remediate the areas of concern identified by this Committee.

The Committee will now invite submissions on whether an immediate order should be imposed."

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#### "Immediate order

Having directed that Mr Nunez Martinez's registration be subject to a suspension order, the Committee considered whether to impose an order for his immediate suspension in accordance with section 30. (1) of the Dentists Act 1984 (as amended).

Mr Ramasamy submitted that an immediate order should be made on the grounds that it is necessary for the protection of the public, and otherwise in the public interest. He applied for this order to cover any possible appeal period and submitted that this would be consistent with the Committee's findings.

The Committee considered the submissions made by Mr Ramasamy on behalf of the GDC. It accepted the advice of the Legal Adviser.

The Committee was satisfied that an immediate order for suspension was necessary for the protection of the public and was otherwise in the public interest. The Committee concluded that given its findings and reasons for the substantive order of suspension to direct otherwise would be inconsistent.

If, at the end of the appeal period of 28 days, Mr Nunez Martinez's had not lodged an appeal, this immediate order will lapse and will be replaced by the substantive direction of suspension for a period of 12 months. If Mr Nunez Martinez does lodge an appeal, this immediate order will continue in effect until that appeal is determined.

Unless Mr Nunez Martinez exercises his right of appeal, his name will be substantively suspended from the register, for a period of 12 months, 28 days from today.

The Committee hereby revokes the current interim order on Mr Nunez Martinez's registration.

That concludes this case for today."

At a review hearing on 7 December 2017 the Chairman announced the determination as follows:

"This is a resumed hearing for the purposes of S 27C of the Dentists Act 1984. Mr Nunez Martinez is neither present nor represented. On behalf of the General Dental Council (GDC), Ms Headley submitted that service of the notification of hearing had been effected in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules) and that the hearing should proceed, notwithstanding Mr Nunez Martinez's absence. The Committee accepted the advice of the Legal Adviser.

#### **Decision on service of the Notification of Hearing**

The Committee first considered whether Mr Nunez Martinez had been notified of the hearing in accordance with Rules 28 and 65 of the Rules. It saw a copy of the Notification of Hearing letter, dated 6 November 2017 and a Royal Mail 'Track and Trace' receipt confirming that the letter was sent to Mr Nunez Martinez's registered address by Special Delivery. A copy of the letter was also sent to him by email.

The Committee was satisfied that the letter contained proper notification of today's hearing including its date, time and location, as well as notification that the Committee had the power to proceed with the hearing in Mr Nunez Martinez's absence. Whilst the Committee took into account that the GDC is not required by the Rules to prove receipt, it noted that the letter was delivered and signed for at Mr Nunez Martinez's registered address on 8 November 2017. The Committee was satisfied that Mr Nunez Martinez had been notified of the hearing in accordance with the Rules.

#### **Decision on whether to proceed with the hearing in the absence of Mr Nunez Martinez**

The Committee next considered whether to exercise its discretion to proceed, notwithstanding the absence of Mr Nunez Martinez. This is a discretion which must be exercised with the utmost care and caution. The notification of hearing, which had also been sent to Mr Nunez Martinez by email, stated that Mr Nunez Martinez was required to confirm whether he would be attending the hearing and/or whether he would be represented. The

notification stated that the Committee had the power to proceed in his absence and that this could be “severely prejudicial” to his case.

By emails sent on 4 and 10 October 2017 the GDC also asked Mr Nunez Martinez to confirm whether he would be attending this hearing or be represented.

No response was received from Mr Nunez Martinez and there had been no other engagement from him regarding these proceedings. He also did not attend or otherwise engage fully with the initial Professional Performance Committee (PPC) hearing in November 2016.

The Committee was satisfied that the GDC have made all reasonable efforts to notify Mr Nunez Martinez of the hearing. There has been no engagement from him, including no application for a postponement. Mr Nunez Martinez did not attend his initial hearing last year. There is therefore nothing to suggest that an adjournment would make his attendance more likely at a future date. Having regard to all the circumstances, including the pending expiry of the suspension of Mr Nunez Martinez’s registration, the Committee concluded that he had voluntarily absented himself and that it would be fair and in the interests of justice to proceed, notwithstanding his absence.

The Committee drew no adverse inferences from Mr Nunez Martinez’s absence.

### Background

On 24 November 2016 the PPC found Mr Nunez Martinez’s fitness to practise to be impaired by reason of his misconduct, the background to which it summarised as follows:

Mr Nunez Martinez’s failings included deficiencies in his clinical treatment, record keeping, and not responding to a patient’s allergic reaction. Moreover there were omissions to undertake periodontal and other assessments of the dental health of patients and to make appropriate use of radiographs for diagnostic purposes. Unless a patient’s dental condition is fully and properly assessed, and recorded prior to treatment, subsequent treatment is at risk of being jeopardised.

In finding misconduct, the initial PPC stated:

*... “In respect of his radiographic practice, the Committee considered Mr Nunez Martinez’s failings to be serious, particularly in relation to taking radiographs without justification as well as failing to report on and/or grade the radiographs. It determined that Mr Nunez Martinez’s failings represented a repeated lack of adherence to the legal requirements of the Ionising Radiation (Medical Exposure) Regulations 2000 (IR(ME)R 2000). In this respect, it also determined that his conduct fell far below the expected standard and would be considered deplorable by fellow practitioners.*

*The Committee’s findings of fact in relation to the assessment and recording of patients’ dental health prior to and during treatment are also illustrated by, and are consistent with, its findings of fact in relation to record keeping generally which was far below the standard expected of a registered dentist.”*

As Mr Nunez Martinez did not attend the hearing or otherwise engage in the proceedings, there was no evidence of any remediation or insight. The initial PPC therefore concluded that *“The limited evidence of remediation and insight lead the Committee to conclude that there remained a real risk of repetition”*...and that Mr Nunez Martinez’s misconduct was so serious that *“The Committee concluded that to make a finding of no current impairment would send a message to the public and the profession that Mr Nunez Martinez’s conduct was acceptable.”*



The initial PPC directed that Mr Nunez Martinez's name be suspended for a period of 12 months with a review, noting that:

A reviewing Committee may be assisted by receiving the following:

- Evidence to demonstrate that Mr Nunez Martinez has developed insight into his failings
- Evidence that he has taken at least some steps to remediate the areas of concern identified by this Committee.

Emailed letters dated 1 December 2016, 31 May 2017 and 7 September 2017 were also sent to Mr Nunez Martinez by the GDC Case Review Team to remind him of the relevance of that advice for the review hearing. He failed to respond to any of them.

### Decision

The role of the Committee today is to review the suspension. In so doing, it heard the submissions made by Ms Headley. The Committee accepted the advice of the Legal Adviser. The Committee had regard to the *Guidance for the Practice Committees, including Indicative Sanctions Guidance* (October 2016).

There is a persuasive burden on Mr Nunez Martinez to demonstrate to this reviewing Committee that he acknowledges the deficiencies in his practice and has adequately addressed them. Given his complete lack of engagement, there is no evidence at all of any insight, reflection or remediation. Although Mr Nunez Martinez's failings are potentially remediable, the Committee is in no different a position to that of the initial PPC over a year ago. There remains a significant risk of repetition of Mr Nunez Martinez's misconduct. There continues to be a real risk of harm to patients should Mr Nunez Martinez be allowed to practise without restriction. Further, given the seriousness of his misconduct, and his failure to demonstrate any insight, reflection or remediation, public confidence in the profession and this regulatory process would also be seriously undermined if a finding of impairment were not made.

Accordingly, the Committee finds that Mr Nunez Martinez's fitness to practise as a dentist continues to be impaired by reason of his misconduct. The Committee considered what sanction, if any, to impose on his registration. The purpose of a sanction is not to be punitive, although it may have that effect, but to protect the public and the wider public interest. To conclude this case with no further action would be inappropriate, given the risk of harm to both patients and public confidence in the profession. No conditions of practice could be formulated in the absence of any engagement from Mr Nunez Martinez which would be measurable, workable or proportionate. There is no indication that he would comply with conditions on his registration.

The suspension of Mr Nunez Martinez's registration therefore remains necessary and proportionate. The Committee directs that the period of suspension be extended by a further period of 12 months, beginning with the date on which it would otherwise expire. The suspension shall be reviewed prior to its expiry.

That concludes the hearing today."

At a review hearing on 29 November 2018 the Chairman announced the determination as follows:

"This is a resumed hearing of Mr Nunez Martinez's case.



Mr Nunez Martinez is neither present nor represented. The General Dental Council (GDC) is also not in attendance. It relies on written submissions, dated November 2018, in which it submits that: (i) service of the notification of hearing had been effected on Mr Nunez Martinez in accordance with the General Dental Council (Fitness to Practise) Rules 2006 (the Rules); (ii) the hearing should proceed in his absence; (iii) his fitness to practise remains impaired by reason of misconduct and (iv) that an order of indefinite suspension be directed.

### **Service and proceeding in the absence of parties**

The Committee first considered whether the notification of today's review hearing had been served on Mr Nunez Martinez in accordance with Rules 28 and 65. The Committee has received a bundle of documents which contains a copy of notification of hearing dated 22 October 2018 which was sent by Special Delivery to Mr Nunez Martinez's last known address. The Committee is satisfied that the notification contains the required information under Rule 28, including the time, date and venue of this hearing; and that the notification had been served on Mr Nunez Martinez in accordance with Rule 65. Taking all these factors into account, the Committee is satisfied that the GDC has complied with the requirements of service in accordance with Rules 28 and 65.

The Committee then went on to consider whether to proceed in the absence of Mr Nunez Martinez in accordance with Rule 54. In so doing, it has borne in mind that its discretion to proceed in the absence of Mr Nunez Martinez must be exercised with the utmost care and caution. It is satisfied that the GDC has made all reasonable efforts to notify Mr Nunez Martinez of this hearing and its purpose. The notification of hearing informed him that the Committee had the power to deal with the resumed hearing on the papers in the absence of parties and that the GDC was proposing to request that arrangements be made for the hearing to take place on the papers. The letter further stated that it was open to Mr Nunez Martinez to provide the Committee with written submissions and any documents that he felt were relevant to the review of the Order. The letter asked Mr Nunez Martinez to notify the GDC by 30 October 2018 if there was any reason why the hearing should not proceed on the papers. He was also asked to notify the GDC whether he would be attending the hearing and/or be represented. On the material before the Committee, he did not respond to that request and there has otherwise been no engagement from him. There has been no application for a postponement and there is nothing to suggest that an adjournment would make Mr Nunez Martinez's attendance any more likely on a future occasion, given that he has not attended previous hearings of his case. Having regard to all the circumstances, the Committee has determined that Mr Nunez Martinez has voluntarily absented himself from this hearing. It considers that there is a clear public interest in reviewing the order today. Accordingly, the Committee has determined to proceed with today's review hearing in the absence of Mr Nunez Martinez and on the papers before it.

### **Background matters**

This is the second review of a suspension order that was first imposed on Mr Nunez Martinez's registration for a period of 12 months by the Professional Performance Committee (PPC) in 2016. Mr Nunez Martinez did not attend that hearing and he was not represented. At that hearing the PPC found proved that Mr Nunez Martinez provided treatment and/or record keeping that was inadequate in that he:

- did not provide adequate clinical care or made no adequate record of providing such care on 12 occasions involving 9 patients.

- Inappropriately prescribed or advised the use of antibiotics or made no adequate justification for the prescription on 7 occasions involving 6 patients.
- Took radiographs without any or any adequate justification or made no or no adequate record of such justification on 3 occasions involving 3 patients.
- Made no or no adequate record of reports on radiographs and/or grading of radiographs on 12 occasions involving 11 patients.
- Did not respond appropriately to the onset of an allergic reaction on one occasion involving a patient.
- Proposed orthodontic treatment without any or any adequate prior assessment or made no or no adequate record of such assessment on 4 occasions involving 4 patients.
- Made no or no adequate record in respect of a variety of clinical matters on 24 occasions involving 16 patients.

The PPC concluded that the findings against Mr Nunez Martinez amounted to misconduct. In considering impairment, the Committee accepted that the failings solely related to Mr Nunez Martinez's clinical practice and it considered that they were capable of being remedied. However, the Committee did not have before it any evidence of remediation undertaken by Mr Nunez Martinez aside from limited CPD evidence and testimonials from 2014. Additionally, due to his limited engagement with the GDC investigation and non-engagement at the hearing, the Committee had little evidence of Mr Nunez Martinez's insight into his failings or of his understanding of the potential risk of harm to patients. The Committee concluded that Mr Nunez Martinez's fitness to practise was currently impaired by reason of misconduct.

The PPC reviewed the order on 7 December 2017. Mr Nunez Martinez did not attend the hearing and was not legally represented. The Committee stated that although Mr Nunez Martinez's failings were potentially remediable, the Committee was in no different a position to that of the initial PPC over a year ago. There remained a significant risk of repetition of Mr Nunez Martinez's misconduct and continued to be a real risk of harm to patients should Mr Nunez Martinez be allowed to practise without restriction. Further, given the seriousness of his misconduct, and his failure to demonstrate any insight, reflection or remediation, public confidence in the profession and this regulatory process would also be seriously undermined if a finding of impairment were not made.

Accordingly, the Committee found that Mr Nunez Martinez's fitness to practise as a dentist continued to be impaired by reason of his misconduct and directed that the period of suspension be extended by a further period of 12 months (with a review).

### **Today's review hearing**

This Committee has comprehensively reviewed the current order. In so doing, it has had regard to the GDC bundle, as well as the GDC's submissions. It notes the absence of any information from Mr Nunez Martinez or indeed any engagement by him with the GDC since November 2016. The Committee has also had regard to the GDC's written submissions dated November 2018.

The Committee first considered whether Mr Nunez Martinez's fitness to practise is still impaired. There is no evidence before this Committee that Mr Nunez Martinez has addressed his past impairment, or provided any information as recommended to him by the PPC at the initial hearing or at the subsequent review hearing. In these circumstances, the Committee considers that there remains a risk that Mr Nunez Martinez could repeat the misconduct and thus he remains a risk to the public. Indeed, it notes that Mr Nunez Martinez

has not engaged with the GDC in relation to these proceedings over a protracted period of time, despite repeated attempts by the GDC to secure his involvement. Accordingly, the Committee has determined that Mr Nunez Martinez's fitness to practise is currently impaired.

The Committee next considered what direction to give, bearing in mind its powers in accordance with Section 27C of the Dentists Act 1984. In so doing, it has had regard to the GDC's "Guidance for the Practice Committees including Indicative Sanctions Guidance" (October 2016).

The Committee has borne in mind the principle of proportionality, balancing the public interest against Mr Nunez Martinez's own interests. The public interest includes the protection of the public, the maintenance of public confidence in the profession, and declaring and upholding standards of conduct and performance within the profession.

The Committee first considered whether it would be appropriate to allow the current order to lapse at its expiry or to terminate it with immediate effect. Given Mr Nunez Martinez's lack of engagement with the GDC and the absence of any remediation, the Committee has concluded that it would not be appropriate to terminate the current order or to allow it to lapse.

The Committee next considered whether a period of conditional registration would be appropriate in this case. The Committee is aware that in order for conditions to be appropriate and workable there would need to be some measure of positive engagement from Mr Nunez Martinez. To date, he has not engaged with the GDC or provided any evidence of remediation, despite being given the opportunity to do so. In these circumstances, the Committee has concluded that replacing the suspension order with a conditions of practice order would not be workable or appropriate.

The Committee then went on to consider whether to direct that the current period of suspension be extended for a further period. It has borne in mind Mr Nunez Martinez's lack of engagement with the GDC over a sustained period of time and the absence of any information as to his professional intentions. Mr Nunez Martinez has chosen not to attend any of the hearings of his case or to provide any meaningful evidence of his remediation. In these circumstances, the Committee has concluded that a further period of suspension of 12 months would serve no useful purpose and that an indefinite period of suspension is the appropriate and proportionate outcome. It therefore directs that Mr Nunez Martinez's registration be suspended indefinitely.

The effect of the foregoing direction is that, unless Mr Nunez Martinez exercises his right of appeal, his registration will be suspended indefinitely from the date on which the direction takes effect.

The Committee would also highlight to Mr Nunez Martinez that should he wish to engage with the GDC, he can apply for a review of the indefinite suspension order if at least two years have elapsed since the direction for indefinite suspension takes effect.

That concludes the case for today."